

Some things of weight ~~humbly~~ offered to the Consideration of the Common-Council of the City of London, with respect to their Electing a Judge of the Sheriffs Court there, now vacant by Law.

SIR Thomas Hammer, late Judge of one of the Sheriffs Courts in London, dying, and Mr. Monday succeeding (as it is supposed) by Vertue of some Contract for the Place, against Law; it is humbly proposed to the Members of the said Common-Council (in whom the Right of Election undoubtedly is) that they would take the following Matters into their serious Consideration, before they determine their Election for him the said Mr. Monday.

That this is a Judicial Place, none can deny; and that no Judicial Place ought to be bought or sold, by 5 and 6 E. 6. ca. 16. must be granted.

But say some, it is a thing hath been very usual and customary, and therefore there is no harm in it, neither indeed can it ever be prevented.

I would desire these Gentlemen to consider this Act of Parliament: *First*, with regard to the Mischief it designs to prevent; and *Secondly*, With respect to the Remedy it is intended to provide.

As to the Law it self, I shall set it down in its own Words, which take as followeth.

The PENALTIES for Buying and Selling of some sort of OFFICES. 5 & 6. E. 6. ca. 16.

FOR the avoiding of Corruption which may hereafter happen to be in the Officers and Ministers in these Courts, Places or Rooms, wherein there is requisite to be had the true Administration of Justice, or Services of Trust, and to the Intent that Persons worthy and meet to be advanced to the Places where Justice is to be ministred, or any Service of Trust executed, should hereafter be preferred to the same and no other.

Be it therefore enacted, by the King, our Sovereign Lord, the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same: That if any Person or Persons, at any time hereafter, Bargain or Sell any Office or Offices, or Deputation of any Office or Offices, or any Part or Parcel of them, or receive, have, or take any Money, Fee, Reward, or any other Profit directly or indirectly, or take any Promise, Agreement, Covenant, Bond, or any Assurance, to receive or have any Money, Fee, Reward, or other Profit, directly or indirectly, for any Office or Offices, or for the Deputation of any Office or Offices, or any Part of any of them, or to the Intent that any Person should have, exercise or enjoy any Office or Offices, or the Deputation of any Office or Offices, or any part of any of them, which Office or Offices, or any Part or Parcel of them, shall in any wise touch or concern the Administration or Execution of Justice, or the Receipt, Con-
troulment or Payment of any of the Kings Highness Treasure, Money, Rent, Revenue, Account, Aulneage, Auditorship, or Surveying of any

any of the Kings Majesties Honours, Castles, Mannors, Lands, Tenements, Woods, or Hereditaments, or any the Kings Majesties Customs or any Administration or necessary Attendants, to be had, done, or executed in any of the Kings Majesties Custom-House or Houses, or the keeping of any the Kings Majesties Towers, Castles, or Forests, being used, occupied, or appointed for a Place of strength and defence, or which shall concern or touch any Clerkship to be occupied in any manner of Court of Record, wherein Justice is to be ministered: That then all and every such Person and Persons that shall so bargain or sell any of the said Office or Offices, Deputation or Deputations, or that shall take any Money, Fee, Reward or Profit for any of the said Office or Offices, Deputation or Deputations, of any of the said Offices, or any Part of any of them; or that shall take any Promise, Covenant, Bond, or Assurance for any Money, Reward, or Profit, to be given for any of the said Office or Offices, Deputation or Deputations of any of the said Office or Offices, or any Part of any of them, shall not only lose and forfeit, all his and their Right, Interest and Estate, which such Person or Persons shall then have, of, in, or to any of the said Office or Offices, Deputation or Deputations, or to any Part of any of them, or of, in, or to the Gift or Nomination of any of the said Office or Offices, Deputation or Deputations, for which Office or Offices, or for the Deputation or Deputations of which Office or Offices, or for any Part of any of them, any such Person or Persons, shall so make any Bargain or Sale, or take, or receive any Sum of Money, Fee, Rewards or Profit, or any Promise, Covenant or Assurance to have or receive any Fee, Reward, Money or Profit: But also that all and every such Person and Persons, that shall give or pay any Sum of Money, Reward, or Fee, or shall make any Promise, Agreement, Bond or Assurance for any of the said Offices, or for the Deputation or Deputations of any of the said Office or Offices, or any Part of any of them, shall immediately, by, and upon the same Fee, Money, or Reward given or paid, or upon any such Promise, Covenant, Bond, or Agreement, had or made, for any Fee, Sum of Money, or Reward to be paid, as is aforesaid, be adjudged a disabled Person in the Law, to all intents and Purposes, to have, occupy, or enjoy the said Office or Offices, Deputation or Deputations, or any Part of any of them, for the which, such Person or Persons, shall so give or pay any Sum of Money, Fee, or Reward, or make any Promise, Covenant, Bond, or other Assurance, to give or pay any Sum of Money, Fee or reward.

And be it also enacted by the Authority aforesaid, that all and every such Bargains, Sales, Promises, Bonds, Agreements, Covenants and Assurances, as he before specified, shall be void, to, and against him and them, by whom any such Bargain, Sale, Bond, Promise, Covenant or Assurance shall be had or made.

Provided alway that this Act, or any thing therein contained, shall not in any wise extend to any Office or Offices, whereof any Person or Persons is or shall be seized of any Estate of Inheritance, nor to any Office of Park-ship, or of the keeping of any Park, House, Mannors, Garden, Chase, or Forest, or to any of them; any thing in this Act heretofore mentioned to the contrary thereof in any wise notwithstanding.

Provided also, that if any Person or Persons do hereafter offend in any thing contrary to the Tenor and Effect of this Act; yet that notwithstanding all Judgments given, and all other Act or Acts executed or done by any such Person or Persons, so offending by Authority or Colour of the Office or Deputation, which ought to be forfeited, or not occupied, or not enjoyed by the Person so offending, as is aforesaid, after the said Offence, so by such Person committed or done, and before such Person so offending, for the same Offence to be removed from the Exercise, Administration and Occupation of the said Office or Deputation shall be and remain good and sufficient in Law, to all intents, Constructions and Purposes, in such like manner and form as the same should or ought to have remained and been, if this Act had never been, had or made.

Provided also, that this Act, or any thing therein contained, shall not in any wise extend to any Bargain, Sale, Gift, Grant, Nomination, Bond, Covenant, Promise, Agreement, or Assurance whatsoever, if it be of, or for any the Office or Offices, Deputation or Deputations aforesaid, or any Part of

of any of them had, made, done, concluded, or agreed, before the First day of March next coming, but that the same Bargain, Sale, Gift, Grant, Nomination, Bond, Covenant, Promise, Agreement, or Assurance had, made, concluded or agreed before the First day of March, shall always remain, continue, and be in such force, strength and effect, as if this Act had never been had or made, any thing before in this Act mentioned to the contrary thereof in any wise notwithstanding.

Provided always, and be it Enacted by the Authority aforesaid, that this Act, or any thing therein contained, shall not in any wise extend or be prejudicial or hurtful to any of the Chief Justices of the Kings Courts, commonly called the Kings-Bench or Common-Place, or to any of the Justices of Assize, that now be or hereafter shall be: But that they and every of them may do in every behalf touching or concerning any Office or Offices, to be given or granted by them or any of them, as they or any of them, might have done before the making of this Act; any thing above mentioned to the contrary in any wise notwithstanding.

By the Preamble of this Law it plainly appears, that one mischief to be prevented was, corruption in the administration of Justice; which the giving any Sum of Money, Fee, or Reward, directly or indirectly for a Judicial Place must necessarily expose a Man to, for whatever he gives, he takes out of the Main Stok, and if he dyes before he hath got it up again, he leaves so much less to his Family; so that rather than they shall have loss, he will (as it too often happens) venture, by indirect means, to make up his Estate, what it was impaired by giving that Sum; and my Lord Coke in his *Third Instit. f. 148.* saith expressly, *they that buy, will sell.*

Let us then consider the Enacting part of this Statute, and that in these following Branches.

It, first, prohibits any direct Bargain and Sale of any Office or Offices, or any part or parcel of any of them.

It, secondly, prohibits receiving, having, or taking any Money, Fee, Reward, or any other Profit directly or indirectly, or taking any Promise, Agreement, Covenant, Bond or any assurance, to receive or have, any Money, Fee, Reward, or other Profit, directly or indirectly, for any Office or Offices, or for the Deputation of any Office or Offices, or any Part of any of them; or **to the intent** Note. that any Person should have, exercise or enjoy any Office or Offices, or the Deputation of any Office or Offices, or any Part of any of them, which touch or concern the Administration of Justice.

It, thirdly, provides a Punishment for the Breakers of this Law, and what is that? Why the Person buying, or directly or indirectly giving any Fee, Reward, or any Profit for such Place, or the Deputation of it, or **to the intent** or purpose that he may exercise it, is **disabled** for ever from holding the same Place.

This being the Law and the Punishment of the Breach; it is to be noted, that not only an open bare-fac'd, right down buying and selling of an Office is unlawful, but even the giving, or receiving any Money, Fee or Reward, nay any Profit, directly or indirectly for any such Office is unlawful, and this not only when it is done directly for the Office, but if it be done **to the intent** and purpose, that he that gives (let him do it directly or indirectly) should Exercise such Office.

And that this hath been taken to be Law ever since the making this Act of Parliament I shall cite some Authorities; and then humbly propose some things to the Common-Council, which I conceive material, My Lord Coke his *Third Instit. f. 159. Bulstr. 3. 90. 91. Hob. Rep. f. 75. Rolls Rep. 1. 236. Cro. Jac. 269. 529.*

All these Books say such place is void, and the Person so coming in as aforesaid utterly disabled, nay that disability is so great, that a *Non obstante* cannot help it. This

This being the Law, and so having been taken, in *Westminster-Hall*, in the purest times, when Judges were most uncorrupt: and considering how great a reflection it must necessarily be, for the *Common-Council* of the City of *London*, to chuse any one into an Office, in their disposal, who, when they have chosen him, is by Law incapable of Exercising the Office, for which they designed him by such Election; and considering Mr. *Munday* makes it his own Plea, that the Loss he shall sustain by being rejected, ought to be an Argument for his being Elected,

I Humbly propose; that it may be referred to a Committee of the *Common-Council*, to enquire how, in what manner, and by vertue of what Contract, Mr. *Munday* came in, that so they may put themselves into a Capacity of doing the City that right, which is due to it from them, and may likewise do Mr. *Munday* that Justice he is intitled to.



FINIS.

16 JUL 1953